IC 97-1
Tax Type: INVESTED CAPITAL TAX
Issue: Invested Capital Tax (Long Term Debt)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ADMINISTRATIVE HEARINGS DIVISION
CHICAGO, ILLINOIS

XYZ CORPORATION, et al.,	)	
Petitioners	)	**No.**
	)	
v.	)	
	)	
THE DEPARTMENT OF REVENUE	)	**Linda K. Cliffel**
OF THE STATE OF ILLINOIS	)	**Administrative Law Judge**
	)	

RECOMMENDATION FOR DISPOSITION

APPEARANCES: John M. Hughes of Lord, Bissell & Brook for taxpayers; Mark Dyckman, Special Assistant Attorney General, for the Illinois Department of Revenue.

SYNOPSIS:

This matter comes on for hearing upon stipulated facts and memoranda of law by agreement of the parties. FICTITIOUS TAXPAYER SYSTEMS, INC. d/b/a XYZ CORPORATION ("XYZ"), and its affiliates, XYZ CORPORATION-Champaign, XYZ CORPORATION-Bloomington, XYZ CORPORATION-Springfield, ANYNAME COMPANY, and XYZ CORPORATION-Decatur (collectively "taxpayers") filed invested capital tax returns in Illinois for the 1991 through 1994 calendar years and paid the tax.

On December 28, 1994, taxpayers filed claims for refund of the total invested capital tax they paid for the years 1991 through 1993. On October 30, 1995, taxpayers filed claims for refund for the

invested capital tax they paid for the 1994 tax year. The Department denied taxpayers' claims on or about January 24, 1996. Taxpayers timely protested the Department's denials on March 22, 1996.

The issue herein is whether cellular telephone service providers are subject to the invested capital tax as provided by 35 **ILCS** 610/2a[1]. On consideration of this matter, it is my recommendation that taxpayers' claims for refund be denied.

FINDINGS OF FACT:

1. XYZ is a Delaware corporation engaged in providing cellular telephone service to subscribers in Chicago and the surrounding metropolitan area. Stip. ¶2.

2. The other taxpayers in this matter are limited partnerships in which XYZ has a controlling interest, which also engage in providing cellular telephone service to subscribers in other locations in Illinois, and, in the case of ANYNAME COMPANY, in both Illinois and the St. Louis, Missouri metropolitan area. Stip. ¶3.

3. Cellular service is provided by transmission of a radio signal from/to a network of radio transmitters ("cells") to/from the cellular telephone. Stip. ¶2.

4. Taxpayers filed Illinois invested capital tax returns for the 1991 through 1994 tax years, and paid the following total amount of tax for those periods which is the subject of the claims:

Company	Payments
XYZ CORPORATION-Champaign	$ 30,000.00

[1] Formerly Ill. Rev. Stat. 1991, ch. 120, ¶467.2a.1. References throughout will be to the current codification where the language of the statute in effect in 1991 has remained unchanged.

XYZ CORPORATION-Bloomington	298,867.71
XYZ CORPORATION-Decatur[2]	57,095.24
XYZ CORPORATION-Springfield	115,560.79
ANYNAME COMPANY	358,660.58
FICTITIOUS TAXPAYER SYSTEMS, INC.	6,054,463.00
Total	$6,914,647.32

Stip. ¶5, Exhibit A.

5. XYZ is a wholly-owned subsidiary of 123 COMPANY ("123"). Stip. ¶9.

6. 123 is the parent corporation of FAIRY TALE CORPORATION ("FTC") which was one of the seven regional subsidiaries of American Telephone and Telegraph Co. ("LDC") which were spun off by LDC to its shareholders on January 1, 1984 in settlement of an antitrust action brought against LDC by the federal government. Stip. ¶10.

7. Although LDC had begun experimenting with cellular telephone systems prior to the divestiture, LDC was prohibited from beginning commercial development of a cellular system before LDC received FCC approval on the creation and capitalization of a cellular subsidiary. Stip. ¶12.

8. The FCC approved the creation and capitalization of LDC on March 31, 1983 in FCC Memorandum Opinion and Order 83-126. Stip. ¶13.

9. LDC was created on September 7, 1983. Shortly thereafter, in preparation for the divestiture, the assets of LDC were split up among seven newly created cellular telephone companies, each of which was an affiliate of one of the regional operating companies. XYZ was one of those affiliates. Stip. ¶14.

10. LDC never developed a viable commercial cellular telephone network before the divestiture. Stip. ¶15.

[2] Includes $23,685.22 for outstanding credit memo #126921.

11. The affiliates of the regional operating companies developed commercial cellular systems and networks after the divestiture. Stip. ¶15.

12. XYZ commenced cellular operations in 1984, and commenced cellular operations in Illinois in 1987. Stip. ¶17.

CONCLUSIONS OF LAW:

The invested capital tax is imposed on public utilities in Illinois as part of the replacement of the personal property tax which was abolished in 1979. The invested capital tax was enacted by Pub. Act 81-1st Sp. Sess. 1[3] as an amendment to the Messages Tax Act (35 ILCS 610/1 et seq.) at 35 **ILCS** 610/2a.[4] Together with the replacement income tax, which was also imposed by the same Public Act, the two taxes were intended to replace the revenue lost by the abolition of ad valorem personal property taxes.

Taxpayers are cellular telephone service providers who filed and paid the invested capital tax for the years 1991 through 1994 and filed claims for refund of the total amount of tax paid. This case arises as a result of the Department's denial of their claims. In their brief, taxpayers raise a number of legal arguments as to why cellular telephone service providers are not subject to the invested capital tax: 1) the cellular industry did not exist in 1979 and was

[3] This legislation also imposed invested capital taxes on electric utilities (35 **ILCS** 620/1 et seq.), natural gas utilities (35 **ILCS** 615/1 et seq.), and water companies (35 **ILCS** 625/1 et seq.).

[4] "§2a.1. Imposition of tax on invested capital....[T]here is hereby imposed upon persons engaged in the business of transmitting messages and acting as a retailer of telecommunications as defined in Section 2 of the Telecommunications Act." Section 2 includes cellular mobile telecommunications service within the definition of "telecommunications". (35 **ILCS** 630/2(c))

not subject to the personal property tax, and therefore, the invested capital tax as a replacement tax cannot apply; 2) taxpayer is engaged in interstate commerce and therefore is exempt from the invested capital tax; 3) the cellular industry is not regulated by the ICC and therefore is exempt from the invested capital tax; and 4) the invested capital tax violates the uniformity requirement of the Illinois Constitution. Each argument will be separately addressed below.

I

First, the taxpayers argue that since the invested capital tax was intended to replace the personal property tax which was abolished in 1979, only regulated public utilities which existed in 1979 and were subject to the personal property tax can be subject to the invested capital tax. Since the cellular industry didn't exist in 1979, therefore, they reason, it cannot be subject to the tax.

Article IX, section 5(c) of the 1970 Illinois Constitution provides:

> On or before January 1, 1979, the General Assembly by law shall abolish all ad valorem personal property taxes and concurrently therewith and thereafter shall replace all revenues lost by units of local government and school districts as a result of the abolition of ad valorem personal property taxes subsequent to January 2, 1971. Such revenue shall be replaced by imposing statewide taxes, other than ad valorem taxes on real estate, solely on those classes relieved of the burden of paying ad valorem personal property taxes because of the abolition of such taxes subsequent to January 2, 1971. If any taxes imposed for such replacement are taxes on or measured by income such replacement taxes shall not be considered for purposes of the imitation of one tax and the ratio of 8 to 5 set forth in Section 3(a) of this Article. (emphasis added)

Taxpayers read the above constitutional provision to require that the replacement taxes, that is, the income tax and the invested capital tax, can only be used to replace the revenue lost by the repeal of the personal property tax, not to increase revenue.

However, in Continental National Bank & Trust Co. of Chicago v. Zagel, 78 Ill.2d 387 (1979), the Illinois Supreme Court, in examining the constitutionality of the replacement income tax, found that "section 5(c) of article IX of the Constitution does not require in the replacement tax an exact correlation of persons and property taxed with those formerly subject to personal property tax. Such a result was specifically rejected by the drafters." *Id* at 403. The Court further states:

> Since a replacement tax imposed on the basis of income was expressly contemplated in section 5(c), we cannot agree that only those persons who incurred liability under the personal property tax were in fact the intended subjects of the replacement taxes. Certainly a tax imposed on the basis of income would not be expected to exempt those who had little or no personal property.

The same principle should apply equally to the invested capital tax. According to Continental National Bank, there is no requirement that the object of taxation under the personal property replacement taxes be identical to that of the personal property tax. Therefore, the fact that there were no cellular companies in 1979 cannot bar the imposition of the invested capital tax. To find otherwise would exempt the cellular companies not only from the invested capital tax but from the income tax as well. This cannot be the result that the legislature intended.

II

Second, taxpayers argue that their business is in interstate commerce and therefore is exempt from the invested capital tax. To support this proposition, taxpayers cite Illinois Bell Telephone Co. v. Allphin, 93 Ill.2d 241 (1982) and Answer Iowa, Inc. v. Department of Revenue, 161 Ill. App. 3d 247 (4th Dist. 1987). Both cases deal with the validity of the Messages Tax Act and hold that the imposition of the messages tax without segregation of taxable intrastate messages from exempt interstate messages is not permissible.

Since the invested capital tax was enacted in 1979 as an amendment to the Messages Tax Act, taxpayers argue that the cases which apply to the messages tax apply with equal force to the invested capital tax. Coextensive with this argument is the premise that the appropriate Commerce Clause[5] analysis is the examination of pre-1945 federal case law (the Messages Tax Act having been enacted in 1945) regarding the taxation of interstate commerce. *See* Illinois Bell, 93 Ill.2d 241 (1982); Answer Iowa, 161 Ill. App. 3d 247 (4th Dist. 1987). However, taxpayer's argument fails for several reasons.

As originally enacted, the provision imposing the messages tax read as follows:

> §2. A tax is imposed upon persons engaged in the business of transmitting messages in this State at the rate of three percent (3%) of the gross receipts from such business....However, such tax is not imposed on the privilege of engaging in any business as interstate commerce or otherwise to the extent such business may not, under the constitution and statutes of the United States, be made the subject of taxation by this State.

[5] U.S. Constitution, Article I, §8, cl. 3.

(emphasis added) (former Ill. Rev. Stat. ch. 120, ¶467.2)

First, only the messages tax was declared invalid by the Court in Illinois Bell, not the entire Messages Tax Act. Initially, it should be noted that the object of the invested capital tax differs from that of the messages tax. The invested capital tax is imposed on "persons engaged in the business of transmitting messages and acting as a retailer of telecommunications" in an amount equal to .8% of taxpayer's invested capital; whereas the messages tax was imposed on "persons engaged in the business of transmitting messages in this State," and was based on gross receipts. Even though the invested capital tax was enacted as §2a of the Messages Tax Act, the statutory language of the provision imposing the message tax differs from that imposing the invested capital tax, and it is the statutory language which controls.

Further, the Illinois Supreme Court in Illinois Bell, 93 Ill.2d 241 (1982), found that the language in the first sentence of §2 of the Messages Tax Act was ambiguous. In order to determine whether "in this State" modified "persons" or "transmitting messages," the Court found it necessary to analyze the emphasized language above and held that the legislature intended that Constitutional law at the time the statute was enacted should apply.

There is no language in the statute enacting the invested capital tax which is comparable to the language in former §2 of the Messages Tax Act, emphasized above. Since 1945, case law has evolved regarding the commerce clause, and it is today's standards that should be applied to the invested capital tax. Goldberg v. Johnson, 117 Ill.2d

493 (1987). In Goldberg, the Illinois Supreme Court upheld the telecommunications excise tax, which was enacted to replace the messages tax, and found that: "[w]e agree with the parties that the four-part test enunciated by the Supreme Court in Complete Auto controls our decision on the commerce clause issue." (citing Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977)) *Id* at 500. *See*, Square D Co. v. Johnson, 233 Ill. App. 3d 1070 (1st Dist. 1992). What's more, the language imposing the invested capital tax is unambiguous and therefore, the analysis of the Illinois Bell court is unnecessary.

Taxpayer in this case takes Illinois Bell one step further and posits that even after the repeal of the messages tax, since the invested capital tax was enacted as a provision of the Messages Tax Act, only taxpayers who would have been subject to the now defunct messages tax are subject to the invested capital tax and that the Constitutional analysis must be the same for the invested capital tax.

While the invested capital tax provisions, as enacted, applied only to persons subject to the messages tax, the legislature amended those provisions subsequent to the repeal of the messages tax. The original language of the statute read as follows:

> In addition to the taxes imposed by the Illinois Income Tax Act and Section 2 of this Act [referring to the messages tax provision], there is hereby imposed upon persons engaged in the business of transmitting messages and subject to the tax imposed by this Act...an additional tax in an amount equal to .8% of such persons' invested capital for the taxable period. (emphasis added) Ill. Rev. Stat. ch. 120, ¶467.2a.1.

In 1991, the legislature deleted the emphasized language which imposed the invested capital tax only on those persons who were also subject to the messages tax.[6] In further support of its proposition, taxpayers cite a private letter ruling issued by the Department, Ltr. Rul. 90-0131 (April 3, 1990).[7] According to the letter ruling, the scope of the invested capital tax must be the same as the messages tax. The Department issued this ruling, however, prior to the change in the language of Section 2a.1. With the deletion of "subject to the tax imposed by this Act," the legislature intended to decouple the invested capital tax from the messages tax, so that taxpayers' argument must fail.

Even if taxpayers' interpretation of Ltr. Rul. 90-0131 is correct, letter rulings may only be cited as precedent by the party to whom the letter is directed. 2 Ill. Admin Code 1200. Further, it is a generally accepted principle that the mistakes of its agents are not binding on the Department in the determination of tax liabilities. Austin Liquor Mart, Inc. v. Department of Revenue, 51 Ill.2d 1, 3 (1972) (citing numerous cases). Therefore, the prior letter ruling has no effect on the issue herein.

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[6] P.A. 87-313 §1; P.A. 87-205, Art. 2, §2-12 (Amendments made by both acts were identical).

[7] "[I]t is the Department of Revenue's opinion that the Invested Capital Tax was not intended to apply to companies that only make sales within Interstate Commerce.... This is so because, at the time when the Invested Capital Tax was enacted, it was limited to the perimeters of the Messages Tax Act, which exempted sales of transmitting messages within Interstate Commerce...from the Messages Tax. Consequently, the Invested Capital Tax cannot be expanded to cover interstate transactions, even if similar transactions may be subject to the Telecommunications Excise Tax Act, unless the legislature enacts legislation which would impose [sic] such transactions to the tax. [Citation to Allphin]" (emphasis added) Ltr. Rul. 90-0131

Ultimately, the language of the statute must control, and the language of the section imposing the invested capital tax differs from that which imposed the messages tax. The restrictive language of the now-repealed §2 of the Messages Tax Act cannot be read in as a limitation to §2a where no such restriction was imposed by the legislature.

Therefore, I find that the appropriate Commerce Clause analysis is the four-step test set forth in Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977), that is, before a tax may be imposed upon an instrumentality of interstate commerce, a court must consider whether: (1) the tax is applied to an activity having a substantial nexus with the taxing State; (2) the tax is fairly apportioned; (3) the tax discriminates against interstate commerce; and (4) the tax is fairly related to the services provided by the State.

There is no question that taxpayers have substantial nexus with Illinois. They own transmitting equipment within the state and transmit messages having an Illinois origination or destination. Second, the same apportionment percentage which is used to measure the taxpayers' business activity in Illinois for income tax purposes is used to apportion the invested capital tax so that the tax is fairly apportioned. The tax does not discriminate against interstate commerce since all cellular service providers are subject to the tax regardless of whether the messages are solely intrastate or are some combination of interstate and intrastate. Finally, since the taxpayers provide services to Illinois subscribers (with the exception of ANYNAME COMPANY which services both Illinois and Missouri), taxpayers enjoy the protection of Illinois laws, access to the courts,

protection of police and fire departments and other services which the State provides its residents. It is not necessary under the Complete Auto test that a precise accounting be made, only that the tax is fairly related to services provided by the state. Commonwealth Edison Company v. Montana, 453 U.S. 609 (1981). Thus, the relevant four-prong test under Complete Auto Transit is met by the invested capital tax.

III

The third argument raised by the taxpayers is that cellular companies are not regulated by the Illinois Commerce Commission ("ICC"), and therefore, are exempted from the invested capital tax by the terms of the statute. 35 **ILCS** 610/2a states:

> Imposition of tax on invested capital. In addition to the taxes imposed by the Illinois Income Tax Act, there is hereby imposed upon persons engaged in the business of transmitting messages and acting as a retailer of telecommunications as defined in Section 2 of the Telecommunications Excise Tax Act..., an additional tax in an amount equal to .8% of such person's invested capital for the taxable period...The invested capital tax imposed by this Section shall not be imposed upon persons who are not regulated by the Illinois Commerce Commission or who are not required, in the case of telephone cooperatives, to file reports with the Rural Electrification Administration. (emphasis added)[8]

Taxpayers argue that Illinois Commerce Commission (hereinafter "ICC") Docket #85-0477 removed cellular companies from active regulatory oversight of the ICC, and therefore the invested capital tax cannot apply. The Department has counter-argued that cellular

[8] Amendment providing that the invested capital tax shall not be imposed on companies not regulated by the ICC became effective September 6, 1991.

companies while not subject to active regulatory oversight are nevertheless regulated by the ICC.

In Docket #85-0477, the ICC excluded Chicago SMSA Limited Partnership, a cellular telephone service provider, from the tariff provisions of the Public Utility Act,[9] but ruled that all other provisions of the Public Utility Act remain applicable to Chicago SMSA. Specifically, the Commission found that in the Chicago Standard Metropolitan Statistical Area ("SMSA") two cellular carriers and six resellers of cellular telephone service provide sufficient competition that cellular telephone service could be excluded from active regulatory oversight.

Although ICC Docket #85-0477 exempted cellular providers from tariff regulation, it stated that cellular providers are still subject to the provisions of Articles I through V, Sections 9-221, 9-222, 9-250, and Articles X and XI of the Public Utility Act, that is, the payment of public utility tax, the filing of information reports with the Commission, the power of the Commission to investigate, on its own motion or upon complaint, any rate, charge, or practice of a public utility to determine if any of them are unjust, unreasonable or discriminatory, and the power of the Commission to hold hearings and dispose of complaints relating to public utility matters. Since cellular service is a telecommunications service subject to the continuing jurisdiction of the Commission it is important to note that even though the powers of the Commission may or may not be exercised, they are nevertheless retained by the Commission over cellular providers to be exercised as is deemed necessary.

[9] 220 **ILCS** 5/1-101 et seq.

Recently, in Chicago SMSA L.P. v. Illinois Commerce Commission, 284 Ill. App. 3d 326 (3d Dist. 1996), the Appellate Court decided, contrary to the ICC's determination in Docket # 85-0477, that cellular telephone service providers are not subject to the Public Utility Tax. In its opinion, the court held that since cellular telephone service providers are not subject to the tariff provisions of the Public Utility Act, they have no gross revenues which are subject to tax.

Taxpayers also argue that federal law has preempted the ICC from regulating cellular telephone companies, and therefore, since the ICC cannot regulate taxpayers, the invested capital tax is inapplicable.[10] According to amendments to the Federal Communications Act, 47 U.S.C. §332(c)(3), the states are prohibited from regulating rates or market entry or exit in the cellular industry.

Taxpayers maintain that since cellular service providers are not subject to tariff regulation by the ICC, the ICC may not regulate their market entry or exit by federal preemption, nor are they subject to the public utility tax[11] which is regulated by the ICC, then cellular providers are "not regulated by the Illinois Commerce Commission." While being subject to the public utility tax is certainly an indication of regulation by the ICC, the question becomes

[10] This argument was treated separately by the taxpayers in their brief. However, I am addressing it here as part of the general discussion of whether taxpayers are regulated by the ICC.

[11] Taxpayer refers to a prior case with the identical issue which was heard by the Department of Revenue Administrative Hearings Division and is currently under administrative review, wherein the administrative law judge stated that his recommendation was based in part on a finding that the cellular provider was subject to the Public Utility Tax. Appeal taken under Administrative Review Law *sub nom* Chicago SMSA L.P. v. Department of Revenue, 95 L 51110 (Cook Cty. Cir. Ct. (Dec. 7, 1995)).

whether the reverse is true. The ICC has retained jurisdiction over cellular service providers, but is it sufficient to constitute regulation? The nature of the ICC's retained jurisdiction has to do with hearing customer complaints and requiring the filing of information reports. Since we have no definition of "regulate" in the statute, we must look at the plain meaning of the words.

According to Webster's New Dictionary of the English Language, "regulate" means "[t]o control or direct according to a rule." Even though the ICC may no longer impose the public utility tax on cellular companies, or control the setting of rates, or market entry or exit, the ICC still has some "control" over cellular service providers. While this may constitute "passive" rather than "active" regulation, as taxpayers argue, there is nothing in the statute that would indicate that this is a distinction intended by the legislature in enacting the statute. Tariff regulation and market entry and exit are clearly significant components of the regulation of public utilities, and have the greatest economic impact on the regulated companies. Because of the competitive nature of taxpayers' business, however, there are not the same concerns regarding the cellular industry as there are in a monopolistic utility. Congress has determined that the states are preempted in certain areas of regulation, and the state has also forborne regulation in some areas. Yet, the cellular telephone industry is a "telecommunications carrier" as defined by The Universal Telephone Service Protection Law of 1985,[12] (formerly Ill. Rev. Stat.

[12] "'Telecommunications carrier' means and includes every corporation, company, association, joint stock company or association, firm, partnership or individual, their lessees, trustees or receivers appointed by any court whatsoever that owns, controls, operates or

1991, ch. 111 2/3, ¶13-202) and therefore still subject to regulation by the ICC, albeit of a limited nature.

It is beyond my province to read restrictions into a statute which have not been set forth by the legislature. While taxpayers have certainly distinguished their industry from other regulated industries, they have failed to show me that the statute indicates limited regulation is not regulation. Thus, as a result of the ICC's retained jurisdiction over cellular service providers, I find that, for purposes of 35 **ILCS** 610/2a, cellular service providers are not excluded from the invested capital tax as "not regulated by the Illinois Commerce Commission."

IV

Finally, taxpayers contend that the Department of Revenue does not impose the invested capital tax on resellers of cellular telephone service, and therefore, has violated the uniformity requirement of Art. IX, Sec.2 of the Illinois Constitution.

Article IX, Sec. 2 states:

> In any law classifying the subjects or objects of nonproperty taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly. Exemptions, deductions, credits, refunds and other allowances shall be reasonable.

Cellular telephone service providers are "telecommunications carriers" as defined by The Universal Telephone Service Protection Law

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manages, within this State, directly or indirectly, for public use, any plant, equipment or property used or to be used for or in connection with, or owns or controls any franchise, license, permit or right to engage in the provision of, telecommunications services between points within the State which are specified by the user...."

of 1985,[13] and are thereby subject to the jurisdiction of the Illinois Commerce Commission. Resellers, on the other hand, are not, by definition, telecommunications carriers (see footnote 12). Taxpayers own the equipment which transmits the radio signals while the resellers buy the air time from the service providers and sell it to the public. Therefore, resellers are not subject to regulation by the ICC.

The Illinois Supreme Court in Searle Pharmaceuticals, Inc. v. Department of Revenue, 117 Ill.2d 454 (1987) established a two-part test to determine if a tax meets the uniformity requirement: 1) the classification must be based on a real and substantial difference between the people taxed and those not taxed, and 2) the classification must bear some reasonable relationship to the object of the legislation or to public policy.

As the Department has pointed out, the difference between these two groups is essentially the difference between wholesalers and retailers, which is clearly a reasonable basis for classification. Even though the cellular service providers' customers are the same as the resellers, the fact that cellular service providers are both owners of the equipment transmitting the messages and are regulated by the ICC is sufficient to establish that there is a real difference between the two.

Further, the invested capital tax was imposed on regulated utilities as a replacement to the personal property tax. These utilities were substantial contributors to the property tax base, so

[13] 220 **ILCS** 5/13-202, formerly Ill. Rev. Stat. 1991, ch. 111 2/3, ¶13-202

that the classification bears a reasonable relationship to the object of the replacement taxes. *See also*, Square D Co.v. Johnson, 233 Ill. App. 3d 1070 (1st Dist. 1992). Therefore, the invested capital tax meets the Searle test and does not violate the uniformity clause of the Illinois Constitution.

WHEREFORE, for the reasons stated above, it is my recommendation that the Notice of Denial should be finalized, and taxpayers' claims are hereby denied.

Date:

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Linda K. Cliffel
Administrative Law Judge